



State of New Jersey
GOVERNMENT RECORDS COUNCIL
101 SOUTH BROAD STREET
PO BOX 819
TRENTON, NJ 08625-0819

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

RICHARD E. CONSTABLE, III
Commissioner

NOTICE OF MEETING
Government Records Council
July 31, 2012

Pursuant to the Open Public Meetings Act, notice is hereby given that the Government Records Council will hold a regular meeting, at which formal action may be taken, commencing at 10:30 a.m., Tuesday, July 31, 2012 at the Department of Community Affairs ("DCA") offices located at 101 South Broad Street in Trenton, New Jersey.

The agenda, to the extent presently known, is listed below. The public session and consideration of cases is expected to commence at 10:30 a.m. in Room 129 of the DCA.

Public Session:

Call to Order
Pledge of Allegiance
Meeting Notice
Roll Call

Closed Session (if necessary):

Public Session:

Roll Call

Approval of Meeting Minutes:

Open Session Minutes (June 26, 2012)
Closed Session Minutes (June 26, 2012)

Cases Scheduled for Adjudication *

Administrative Disposition Adjudications with Recusals: None

Administrative Disposition Adjudications with no Recusals:

1. Heather Marsh v. Jefferson Township Board of Education (Morris) (2011-169)
2. Joyce Blay v. Lakewood Board of Education (Ocean) (2011-201)
3. Stephen J. Bleistine v. South Harrison Township School District (Gloucester) (2012-12)
4. Donna Bahrle v. Raritan Valley Community College (Somerset) (2012-20)
5. Joseph Blaettler v. City of Union City (Hudson) (2012-21)



6. Mario Accumano v. Township of East Hanover (Morris) (2012-24)
7. Phillip Molnar (on behalf of The Express-Times) v. Pollution Control Financing Authority of Warren County (2012-124)
8. Terry Crouthamel v. County of Salem (2012-182)
9. Terry Crouthamel v. County of Hunterdon (2012-183)
10. Terry Crouthamel v. Township of Pilesgrove (Salem) (2012-184)

Individual Complaint Adjudications with Recusals:

1. Larry A. Kohn v. Township of Livingston (Essex) (2010-303)
2. Larry A. Kohn v. Township of Livingston (Essex) (2010-304)
3. Brian J. Levine (On behalf of Natalie Stephens) v. NJ Department of Community Affairs, Division of Fire Safety (2010-339)
4. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-114)
5. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-115)
6. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-116)
7. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-117)
8. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-118)
9. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-119)
10. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-128)
11. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-129)
12. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-130)
13. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-131)
14. Robert A. Verry v. Borough of South Bound Brook (Somerset) (2011-132)
15. Mikal McClain v. Essex County Prosecutor's Office (2011-202)

Individual Complaint Adjudications with no Recusals:

16. Costantino Colasante v. County of Bergen (2010-18)
17. Benjamin A. Spivack (On behalf of Passaic County Sheriff's Department) v. NJ Civil Service Commission (2010-130)
18. Jesse Wolosky v. Borough of Wharton (Morris) (2010-162)
19. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-200)
20. Jesse Wolosky v. Borough of Madison (Morris) (2010-222)
21. Vesselin Dittrich v. City of Hoboken (Hudson) (2010-279)
22. Clara Halper v. Township of Piscataway (Middlesex) (2010-281)
23. Susan Kehoe v. NJ Department of Environmental Protection, Fish & Wildlife (2010-300)
24. Jesse Wolosky v. Township of Vernon (Sussex) (2010-311)
25. James Sage v. Monmouth County Sheriff's Department (2011-17)
26. Donna Moon v. City of Trenton, Police Department (Mercer) (2011-59)
27. Daniel Gatson v. NJ State Parole Board (2011-63)
28. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-71)
29. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-73)
30. Elizabeth Cross v. Township of Wall (Monmouth) (2011-98)
31. Jesse Wolosky v. Borough of Woodland Park (Passaic) (2011-99)
32. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-100)
33. Baruch B. Blaustein v. Lakewood Board of Education (Ocean) (2011-109)
34. Mark Lagerkvist v. NJ Department of Treasury, Division of Pensions & Benefits (2011-110)

35. Bernard Reid v. NJ Department of Corrections (2011-111)
36. Sabino Valdes v. Union City Board of Education (Hudson) (2011-139)
37. Sabino Valdes v. Union City Board of Education (Hudson) (2011-146)
38. Sabino Valdes v. Union City Board of Education (Hudson) (2011-147)
39. Sabino Valdes v. Union City Board of Education (Hudson) (2011-157)
40. Sabino Valdes v. Union City Board of Education (Hudson) (2011-172)
41. Sabino Valdes v. Union City Board of Education (Hudson) (2011-181)
42. Jerry W. Pecaro v. County of Union (2011-187)
43. Jerry W. Pecaro v. County of Union (2011-188)
44. Jerry W. Pecaro v. County of Union (2011-189)
45. Jerry W. Pecaro v. County of Union (2011-190)
46. Jerry W. Pecaro v. County of Union (2011-191)
47. Jerry W. Pecaro v. County of Union (2011-192)
48. Keith A. Werner v. NJ Department of Corrections (2011-206)
49. Mr. & Mrs. L. Johnston v. Montclair Board of Education (Essex) (2011-213)
50. Richard Rivera v. City of Passaic (Passaic) (2011-214)
51. Richard Rivera v. City of Bayonne, Law Department (Hudson) (2012-49)
52. James Katz (On behalf of Camden County Counsel #10) v. NJ Civil Service Commission (2012-51)
53. Richard Rivera v. City of Bayonne (Hudson) (2012-87)

Court Decisions of GRC Complaints on Appeal: None

Complaints Adjudicated in NJ Superior Court & NJ Supreme Court:

Sussex Commons Associates, LLC v. Rutgers, the State University, 2012 N.J. LEXIS 765 (July 5, 2012).

Gensch v. Hunterdon County Clerks Office, 2012 N.J. Super. Unpub. LEXIS 1630 (July 9, 2012).

North Jersey Media Group, Inc. v. Borough of Paramus, 2012 N.J. Super. Unpub. LEXIS 1685 (July 13, 2012).

Hampton Farm, LLC v. The Borough of Hampton and The Highlands Water Protection and Planning Council, 2012 N.J. Super. Unpub. LEXIS 1756 (Law Div. July 17, 2012).

Executive Director's Report and New Business:

Public Comment: In the interest of time, speakers are limited to **five (5) minutes**.

Adjournment

***Neither attorneys nor other representatives of the parties are required to attend this meeting nor will they be permitted to make oral or written comment during the adjudication.**



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Complaint Disposition Synopsis – July 31, 2012

Disclaimer: All summaries below are draft and are not final decisions until approved by the Council.

(Please Note: citations to legal authorities within the Council's proposed Conclusions and Recommendations set forth below have been omitted)

Administrative Disposition Adjudications [with no Recusals]:

1. **Heather Marsh v. Jefferson Township Board of Education (Hudson) (2011-169)**
 - Complaint voluntarily withdrawn
2. **Joyce Blay v. Lakewood Board of Education (Ocean) (2011-201)**
 - Complaint voluntarily withdrawn
3. **Stephen J. Bleistine v. South Harrison Township School District (Gloucester) (2012-12)**
 - Complaint voluntarily withdrawn
4. **Donna Bahrle v. Raritan Valley Community College (Somerset) (2012-20)**
 - Complaint settled in mediation
5. **Joseph Blaettler v. City of Union City (Hudson) (2012-21)**
 - Complaint voluntarily withdrawn
6. **Mario Accumano v. Township of East Hanover (Morris) (2012-24)**
 - Complaint settled in mediation
7. **Molnar v. Pollution Control Financing Authority of Warren County, 2012-124**
 - Complaint voluntarily withdrawn
8. **Terry Crouthamel v. County of Salem (2012-182)**
 - Complaint voluntarily withdrawn
9. **Terry Crouthamel v. County of Hunterdon (2012-183)**
 - Complaint voluntarily withdrawn
10. **Terry Crouthamel v. Township of Pilesgrove (Salem) (2012-184)**
 - Complaint voluntarily withdrawn

Individual Complaint Adjudications with Recusals:

1. Larry A. Kohn v. Township of Livingston (Essex)(2010-303) (Reconsideration)

Records Requested: Bids, Proposals, Resolution

Records Format Requested: Inspection

- The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his request for reconsideration of the Council's March 27, 2012 Final Decision that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably, and failed to submit any evidence to prove that the record the Mayor relied on in her September 20, 2010 speech was responsive to the Complainant's OPRA request Item No. 1 or that specifically identifying that the Complainant did not provide the responsive records until after the filing of the Denial of Access Complaint would change the substance of the Council's Final Decision. Thus, the Complainant's request for reconsideration is denied.

2. Larry A. Kohn v. Township of Livingston (Essex) (2010-304)(Reconsideration)

Records Requested: Executive session minutes, police report, purchase order

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his request for reconsideration of the Council's March 27, 2012 Final Decision that 1) the GRC's decision is based upon a "palpably incorrect or irrational basis" or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably, and failed to submit any evidence to prove that specifically identifying that the Complainant did not provide the responsive records until after the filing of the Denial of Access Complaint would change the substance of the Council's Final Decision. Thus, the Complainant's request for reconsideration is denied.

3. Brian J. Levine (On behalf of Natalie Stephens) v. NJ Department of Community Affairs, Division of Fire Safety (2010-339)

Records Requested: Statements under oath, deposition transcripts and other documentation

Records Format Requested: Copies

- Although the Custodian responded in writing to the Complainant's OPRA request within the statutorily mandated time frame, the Custodian's response was legally insufficient because she failed to provide the correct statute as the specific lawful basis for said denial of access. Therefore, the Custodian has violated OPRA.
- Because the Custodian certified in the Statement of Information that no deposition transcripts responsive to the Complainant's OPRA request exist and because there is no evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the deposition transcripts. The Custodian's denial of access to the six (6) transcribed statements and the nine (9) transcribed interviews was unlawful; the

Custodian must provide such records to the Complainant. However, to protect the privacy interests of those who provided such statements, names and ranks of interviewees and any other personal identifying information shall be redacted.

- The Custodian shall comply with item #3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.
- Because the Complainant's request for "other documentation reviewed, relied upon or considered in the preparation of the Final Report issued on October 1, 2010" fails to identify specific government records sought and would require the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

4. **Robert A. Verry v. Borough of South Bound Brook (Somerset)(2011-114, 2011-115, 2011-116, 2011-117 & 2011-118) Consolidated cases**

Records Requested: E-mails

Records Format Requested: Copies via facsimile or e-mail

- Although the Custodian provided to the GRC his first (1st) certification on June 6, 2012, the GRC requested additional clarification regarding whether the Custodian complied with the Council's May 29, 2012 Interim Order because the Custodian's first (1st) certification was unclear as to whether he provided the responsive records to the Complainant per the Council's Order. Further, because the Custodian did not provide his second (2nd) certification clarifying that he provided the records on June 5, 2012 until after the last day to comply with the Order, the Custodian did not fully comply with said Order.
- Although the Custodian failed to bear his burden of proving a lawful denial of access to the Complainant's five (5) OPRA requests, because said requests were valid and the Custodian further failed to fully comply with the Council's May 29, 2012 Interim Order, the Custodian did provide access to the responsive records on June 5, 2012 and further certified that no records responsive to the first (1st) and second (2nd) OPRA requests existed. Additionally, the evidence of record does not indicate that the Custodian's violations of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
- The Complainant has achieved "the desired result because the complaint[s] brought about a change (voluntary or otherwise) in the custodian's conduct." Additionally, , a factual causal nexus exists between the Complainant's filing of these five (5) Denial of Access Complaints and the relief ultimately achieved. Specifically, the Custodian provided access to e-mails responsive to the Complainant's third (3rd), fourth (4th) and fifth (5th) OPRA requests while certifying that no records responsive to the Complainant's first (1st) and second (2nd) OPRA requests existed. Further, the relief ultimately achieved had a basis in law. Therefore, the

Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. [A]n enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ...justify[ing] an upward adjustment of the lodestar [;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

5. Robert A. Verry v. Borough of South Bound Brook (Somerset)(2011-119)

Records Requested: Correspondence, E-mail, Investigation reports

Records Format Requested: Copies via e-mail or facsimile

- The Complainant's request items Nos. 1, 2, 3, 5, 8 and 14 are invalid under OPRA because they fail to identify specific dates or ranges of dates for the responsive e-mails and because the request items require research beyond the scope of a custodian's duties.
- Because the Complainant's request items Nos. 4, 7, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19 and 20 fail to identify with reasonable clarity the specific government records sought, these request items are invalid under OPRA.
- The Custodian has unlawfully denied access to the requested "scheduling notice" and must disclose same to the Complainant.
- The Custodian shall comply with Item No. 3 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

6. Robert A. Verry v. Borough of South Bound Brook (Somerset)(2011-128, 2011-129, 2011-130, 2011-131 & 2011-132) Consolidated Cases

Records Requested: Subpoenas

Records Format Requested: Copies via e-mail or facsimile

- Because the Complainant identified a type of government record (a subpoena or subpoenas), within a specific date range (2005 to 2001), pertaining to certain key words (criminal, civil and administrative investigations) and also identified the individuals named in the subpoena (the Borough, the Custodian, previous Counsel, Ms. Schubert and Mr. Warrelmann), MAG Entertainment, LLC v. Division of Alcoholic Beverage Control, 375 N.J. Super. 534, 546 (App. Div. 2005), Bent v. Stafford Police Department, 381 N.J. Super. 30, 37 (App. Div. 2005), New Jersey Builders Association v. New Jersey Council on Affordable Housing, 390 N.J. Super. 166, 180 (App. Div. 2007) and Schuler v. Borough of Bloomsbury, GRC Complaint No. 2007-151 (February 2009) do not apply to the OPRA requests relevant to these complaints. The Custodian's search is not open-ended, nor does it require research, but rather requires the Custodian to locate the corresponding subpoena or subpoenas in his files.

Therefore, the Custodian must disclose the requested records to the Complainant. Moreover, if no records responsive to a particular OPRA request at issue herein exist, the Custodian must legally certify to this fact.

- The Custodian shall comply with Item No. 1 above within five (5) business days from receipt of the Council's Interim Order with appropriate redactions, including a detailed document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4, to the Executive Director.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

7. Mikal McClain v. Essex County Prosecutor's Office (2011-202)

Records Requested: Discoveries, files, PROMIS/GAVEL, voire dire

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically identify a government record.

Individual Complaint Adjudications with no Recusals:

8. Costantino Colasante v. County of Bergen (2010-18) *Reconsideration*

Records Requested: Records regarding the exterior renovation of stairs and retaining walls to the William Carlos Williams Center for the Performing Arts

Records Format Requested: Examination

- Because the Custodian's Counsel has established in his request for reconsideration of the Council's January 31, 2012 Interim Order that the Council mistakenly understood that the Custodian failed to bear his burden of proving a lawful denial of access to the change order dated December 27, 2009 and the correspondence between the contractor and the architect related to the change order, said request for reconsideration is granted.
- Counsel's argument that the Custodian's vacation constituted extraordinary circumstances which prevented the Custodian from complying with the terms of the Council's September 27, 2011 Interim Order in a timely manner is not persuasive and does not excuse the Custodian from complying with the terms of said Order in a timely manner. As such, Paragraph 1 of the Council's January 31, 2012 Interim Order shall remain unchanged.
- Because the Custodian made clear that a memorandum of authorization is identical to a change order in its purpose and there was no credible evidence proffered to dispute such clarification, and because the evidence of record reveals the Custodian disclosed to the Complainant memoranda of authorization which he determined were responsive to the Complainant's request along with e-mail correspondence related to said memoranda, the Custodian by disclosing those records did not unlawfully deny access to the change order but rather disclosed records equivalent to the change order and thereby complied with the Council's September 27, 2011 Interim Order. Any finding by the Council hereunder which is inconsistent with this determination is hereby abrogated.

- The Custodian failed to respond in writing to the Complainant's January 11, 2010 OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, which resulted in a "deemed" denial of the Complainant's request and the Custodian's untimely response to the Complainant's OPRA request was legally insufficient because the Custodian failed to designate and respond to each record that was responsive to the Complainant's request individually and provide a specific reason for denial of each. The Custodian also failed to comply with the terms of the Council's September 27, 2011 Interim Order within the time provided for such compliance. However, the Custodian did disclose to the Complainant the records ordered for disclosure pursuant to the Council's September 27, 2011 Interim Order. As such, it is concluded upon reconsideration that although the Custodian did not at all times act in full compliance with the provisions of OPRA, the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances. Any finding by the Council hereunder which is inconsistent with this determination is hereby abrogated.

9. Benjamin A. Spivack (On behalf of Passaic County Sheriff's Department) v. NJ Civil Service Commission (2010-130) *In Camera*

Records Requested: Written communications

Records Format Requested: Copies

- The Custodian timely complied with the Council's September 27, 2011 Interim Order by providing the records for an in camera review and Custodian's certified confirmation of compliance to the Executive Director within the deadline to comply with said Order.
- On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the In Camera Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rule 1:4-4 to the Executive Director.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

10. Jesse Wolosky v. Borough of Wharton (Morris) (2010-162)

Records Requested: Executive session minutes

Records Format Requested: electronic format

- The Executive Director respectfully recommends the Council find that this complaint be dismissed because the Complainant withdrew this complaint from the Office of Administrative Law via letter from his legal counsel dated July 6, 2012. Therefore, no further adjudication is required.

11. Mary Steinhauer-Kula v. Township of Downe (Cumberland) (2010-200) *In Camera*

Records Requested: “Downe Township Value Determination” and “Field Data Sheet” from the property tax record cards for properties.

Records Format Requested: Copies

- Because the Custodian did not contact the GRC seeking an extension of the prescribed time frame to comply with the Council’s March 27, 2012 Interim Order until after the GRC telephoned the Township on May 10, 2012, the Custodian did not timely comply with the Council’s March 27, 2012 Interim Order.
- The Council’s in camera examination reveals that the records at issue herein were used in the decision making process to evaluate and determine the property tax for the properties listed because the records contain information and calculations pertaining to the acreage, improvements, and tax rate applicable to each property. Also, disclosure of the records at issue herein would reveal deliberations that occurred during the decision making process, because the requested records contain handwritten notes, calculations, and other impressions affecting the tax valuation of the subject properties. Thus, the requested “Downe Township Value Determination” and “Field Data Sheets” from the property tax record cards are exempt from disclosure under OPRA as inter-agency or intra-agency advisory, consultative or deliberative material. The Custodian has therefore borne his burden of proof that denial of access to the requested records was lawful. Although the Custodian failed to respond in writing to the Complainant’s OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days, resulting in a “deemed” denial of the Complainant’s OPRA request and failed to timely comply with the Council’s March 27, 2012 Interim Order by providing the records necessary for the Council’s in camera review within five (5) business days of receipt of the Council’s Interim Order, the Custodian bore his burden of proving that access to the requested records was lawfully denied. Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

12. Jesse Wolosky v. Borough of Madison (Morris) (2010-222)

Records Requested: Payroll record, vendor activity report, resume, financial disclosure statement

Records Format Requested: Copies

- Because the Custodian disclosed to the Complainant all records ordered for disclosure pursuant to the Council’s June 26, 2012 Interim Order, and provided certified confirmation of compliance to the Executive Director within the time period provided for compliance with said Order, the Custodian fully complied with the Council’s June 26, 2012 Interim Order.
- Although the Council determined in its Interim Order dated June 26, 2012 that the Custodian’s failure to furnish the requested resume was an unlawful denial of access, the Custodian did not unlawfully deny the Complainant access to the Clerk’s home address information pursuant to N.J.S.A. 47:1A-1 and the Custodian timely complied with the Council’s June 26, 2012 Interim Order. Additionally, the evidence of record does not indicate that the Custodian’s violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian’s actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

- The Complainant has achieved “the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian’s conduct.” *Id.* at 432. Additionally, pursuant to *Mason v. City of Hoboken and City Clerk of the City of Hoboken*, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant’s filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian provided the Complainant with the requested resume in accordance with the Council’s June 26, 2012 Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney’s fee. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney’s fees. [A]n enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of “unusual circumstances ... justify[ing] an upward adjustment of the lodestar [;]” this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

13. **Vesselin Dittrich v. City of Hoboken (Hudson) (2010-279) *Reconsideration***

Records Requested: Legal bills, invoices

Records Format Requested: Inspection

- The Executive Director respectfully recommends the Council find that because the Complainant has failed to establish in his motion for reconsideration of the Council’s February 28, 2012 Final Decision that 1) the GRC’s decision is based upon a “palpably incorrect or irrational basis” or 2) it is obvious that the GRC did not consider the significance of probative, competent evidence, and has failed to show that the GRC acted arbitrarily, capriciously or unreasonably, and failed to submit any evidence to contradict the Custodian’s Statement of Information certification or Ms. Seguinot’s subsequent legal certification, said request for reconsideration is denied.

14. **Clara Halper v. Township of Piscataway (Middlesex) (2010-281)**

Records Requested: Legal Fees, expenses, invoices

Records Format Requested: Copies

- Although the Custodian responded in writing to the Complainant’s July 7, 2010 OPRA request within the statutorily mandated time frame, the Custodian’s response was legally insufficient because she failed to respond to each request item individually. Therefore, the Custodian has violated N.J.S.A. 47:1A-5.g. Moreover, the Custodian’s failure to respond immediately to the Complainant’s OPRA request for legal invoices results in a violation of N.J.S.A. 47:1A-5.e.
- The Township’s Ordinance No. 06-51 is invalid as it applies to OPRA. The Township must charge the “actual cost” of providing the requested copies.
- The Complainant’s request Item No. 1, a request for legal fees, is a request for identifiable government records, i.e., legal invoices, and therefore the Complainant’s OPRA request for Item No. 1 does seek an identifiable government record. Thus, the Custodian must disclose the legal invoices responsive to request Item No. 1.
- The Custodian shall calculate the “actual cost” to provide the records responsive to request Item No. 1 (see No. 3 above) within five (5) business days and present said cost to the

Complainant. The Complainant shall deliver to the Custodian (a) payment of the actual cost of the records responsive to request Item No. 1 or (b) a statement declining to purchase these records. The Complainant's failure to take any action within three (3) business days of receipt of the estimated cost shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records. Within eight (8) business days from receipt of the Council's Interim Order the Custodian shall provide to the Executive Director a statement with respect to the Complainant's willingness or refusal to purchase the requested records. The Custodian's statement shall be in the form of a certification in accordance with N.J. Court Rule 1:4-4.

- The Custodian failed to prove that the special service charge of \$2,969.88 was reasonable and warranted under OPRA. Specifically, it is reasonable to charge a special service charge for time expended by Ms. Field (\$281.40), Ms. Kopidlowski (\$749.81) and the two (2) Public Works employees (\$826.54) based on the amount of records, because all records were in approximately 500 boxes in storage and the four (4) employees expended 64 hours working on the Complainant's request Item No. 2. Therefore, the Custodian is only permitted to charge \$1,857.75, which represents the cost of these four (4) employees. However, the portion of the special service charge for the other four (4) employees is unreasonable and unwarranted pursuant to N.J.S.A. 47:1A-5.c. Specifically, the Custodian failed to bear her burden of proving that the assistance of these employees was necessary to identify the responsive invoices. Moreover, the Custodian is not permitted to charge the Complainant for Counsel and Mr. Crisuolo's review and redaction of the responsive records.
- The Complainant shall, within five (5) business days from receipt of the Council's Interim Order, deliver to the Custodian (a) a payment in the amount of \$1,857.75, or (b) a statement declining to purchase the records. Should the Complainant accept and pay the appropriate special service charge, the Custodian shall disclose the responsive records within three (3) business days from receipt of same. The Complainant's failure to take any action within the five (5) business day period shall be construed the same as (b) above and the Custodian shall no longer be required to disclose the records. Within eight (8) business days from receipt of the Council's Interim Order the Custodian shall provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4, to the Executive Director with respect to the Complainant's willingness or refusal to purchase the requested records.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

15. Susan Kehoe v. NJ Department of Environmental Protection, Fish & Wildlife (2010-300)

Records Requested: How many black bears were radio collared in the years 2003 and 2005?
How many radio-collared black bears were killed during the bear hunts in the years 2003 and 2005?

Records Format Requested: N/A

- Because the Custodian failed to notify the Complainant in writing within the statutorily mandated seven (7) business day period of a date certain when access to the records would be granted or denied, the Custodian failed to sufficiently respond to the Complainant's request

pursuant to *Ghana v. New Jersey Department of Corrections*, GRC Complaint No. 2008-154 (June 2009), and the Complainant's request item is "deemed" denied.

- Because OPRA does not require custodians to research files, correlate data, and compile a record that may be responsive to a complainant's request, the Custodian had no legal duty to create a record containing the information which the Complainant specifically requested; therefore, the Custodian has met the burden of proof that access to these records was not unlawfully denied.
- Because the Custodian certified in the Statement of Information dated April 12, 2011 that no records responsive to the Complainant's requests exist, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records.
- Although the Custodian failed to notify the Complainant in writing within the statutorily mandated seven (7) business day period of a date certain when access to the records would be granted or denied and thereby failed to sufficiently respond to the Complainant's request, no records responsive to the Complainant's requests exist the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

16. Jesse Wolosky v. Township of Vernon (Sussex) (2010-311) *In Camera*

Records Requested: Executive Session minutes

Records Format Requested: Copies

- The Custodian provided the GRC with nine (9) copies of the legal certification, the unredacted records requested for the in camera inspection and a redaction index on May 14, 2012, within the requested extension of time. Therefore, the Custodian timely complied with the Council's April 25, 2012 Order.
- The Custodian failed to bear her burden of proof that the denial of access to portions of the executive session minutes set for in bold type in the table above was lawful. Therefore, the Custodian must disclose the material listed above which is not exempt from disclosure pursuant to N.J.S.A. 10:4-12(b) (8) to the Complainant.
- On the basis of the Council's determination in this matter, the Custodian shall comply with the Council's Findings of the In Camera Examination set forth in the above table within five (5) business days from receipt of this Order and simultaneously provide certified confirmation of compliance pursuant to N.J. Court Rules, 1969 R. 1:4-4 (2005) to the Executive Director.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- The Council defers analysis of whether the Complainant is a prevailing party pending the Custodian's compliance with the Council's Interim Order.

17. James Sage v. Monmouth County Sheriff's Department (2011-17)

Records Requested: Correspondence

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that because the Custodian certified in the Statement of Information dated April 12, 2011 that no records that may be responsive to the Complainant's request exist, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to said records.

18. **Donna Moon v. City of Trenton, Police Department (Mercer) (2011-59)**

Records Requested: Lists, reports

Records Format Requested: Copies

- The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request.
- The Complainant's requests for items numbered 1 through 4 are invalid under OPRA because they fail to identify the specific government records sought. Moreover, although the Custodian disclosed the records she determined were responsive to the Complainant's request for items numbered 1 through 4, the Custodian had no legal duty to do so because OPRA does not require custodians to research files to discern which records may be responsive to a request or to conduct research to locate records potentially responsive to the Complainant's request.
- Because the Custodian certified that she disclosed a record to the Complainant which contained a resolution that stated that no site plan for Risoldi's Auto Towing exists on file, and because there is no credible evidence in the record to refute the Custodian's certification, the Custodian did not unlawfully deny access to request item number 5.
- Although the Custodian failed to respond in writing to the Complainant's OPRA request within the statutorily mandated period which resulted in a "deemed" denial of the Complainant's OPRA request, the Custodian did disclose to the Complainant all of the records the Custodian determined were responsive to the Complainant's request despite the fact she had no legal duty under OPRA to do so. Moreover, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

19. **Daniel Gatson v. NJ State Parole Board (2011-63)**

Records Requested: Any and all papers, written or printed book, memo, documents, drawings, map, plan, photographs, microfilm, data processed or image processed documents, information stored or maintained electronically or by sound recording or in a similar device, e-mails, or any copy thereof, that has been made, maintained, kept on file or received in the official course of business, which concern the Complainant or mentions the Complainant's name.

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that because the Complainant's request fails to identify specific government records sought and would require

the Custodian to conduct research in order to determine the records which may be responsive to the request, the Complainant's request is overly broad and is invalid under OPRA.

20. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-71)

Records Requested: Vendor list/roster

Records Format Requested: Copies

- The current Custodian timely complied with the Council's June 26, 2012 Interim Order by providing access (via Counsel) to the requested records to the Complainant via e-mail and providing certified confirmation to the GRC within the prescribed time frame to comply.
- Although the GRC determined the special service charge proposed by the original Custodian was not reasonable and unwarranted, the current Custodian timely complied with the Council's June 26, 2012 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the original Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
- The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Id. at 432. Additionally, pursuant to *Mason v. City of Hoboken* and *City Clerk of the City of Hoboken*, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the current Custodian provided the Complainant with the responsive vendor list in accordance with the Council's June 26, 2012 Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee pursuant to N.J.S.A. 47:1A-6, *Teeters*, supra, and *Mason*, supra. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. [A]n enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ... justify[ing] an upward adjustment of the lodestar [;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

21. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-73)

Records Requested: Legal appointments, contracts, professional service agreements, payment vouchers, invoices, e-mails, memoranda, letters, notes, policies, procedures, minutes, resolutions, facsimiles, manuals, handbooks, text messages, instant messages, chat boards/forums, discussion boards/forums, message boards/forums, legal appointments, legal contracts, legal agreements, professional service agreements, qualifications, invitation for bids, request for proposals (including "drafts" of any preceding records), payment vouchers and invoices, purchase orders, voice recordings and video recordings

Records Format Requested: Copies

- The Custodian violated N.J.S.A. 47:1A-5.e. by failing to immediately respond in writing to the Complainant's first (1st) OPRA request seeking an extension of time to grant access to

the responsive contract and invoices. See *Herron v. Township of Montclair*, GRC Complaint No. 2006-178 (February 2007).

- Although the Custodian timely responded (via Mr. Cooper) to the Complainant's January 14, 2011 OPRA request in writing requesting an extension of one (1) week to respond to said request, the Custodian's failure to grant or deny access to the requested records within the extended time frame results in a "deemed" denial of the Complainant's OPRA request. Moreover, although the Custodian provided records on February 7, 2011, eight (8) business days after the expiration of the extended time frame to respond, her response was insufficient because she failed to state whether certain records existed, and further failed to provide a date certain on which she would advise the Complainant whether any 2011 records existed.
- The Custodian did not timely respond to the Complainant's second (2nd) OPRA request. As such, the Custodian's failure to respond in writing to said OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request. Further, the Custodian's failure to immediately respond to the Complainant's requests for contracts and vouchers results in a violation of OPRA's immediate access provision.
- The Custodian certified that the only existing record responsive to the Complainant's first (1st) OPRA request Item No. 1 was the 2009 contract provided to the Complainant on February 7, 2011. Thus, the evidence of record supports a conclusion that no other records responsive exist and the Complainant has provided no competent, credible evidence to refute this certification. Therefore, the Custodian did not unlawfully deny access to the contracts for 2008, 2010 and 2011.
- The GRC must conduct an in camera review of the following redacted invoices to determine the validity of the Custodian's assertion that the records contain attorney-client privileged and personnel information which is exempt from disclosure pursuant to N.J.S.A. 47:1A-1.1.:
 - Invoice dated February 14, 2008 (1 page).
 - Invoice dated April 9, 2008 (2 pages).
 - Invoice dated July 25, 2008 (1 page).
 - Invoice dated October 16, 2008 (2 pages).
 - Invoice dated December 8, 2008 (1 page).
 - Invoice dated April 22, 2009 (1 page).
 - Invoice dated September 24, 2009 (1 page).
 - Invoice dated December 3, 2009 (2 pages).
 - Invoice dated January 26, 2010 (2 pages).
 - Invoice dated March 24, 2010 (2 pages).
 - Invoice dated May 17, 2010 (2 pages).
 - Invoice dated July 15, 2010 (2 pages).
 - Invoice dated November 10, 2010 (4 pages).
- Moreover, the Custodian must either certify whether any 2011 invoices responsive to the Complainant's OPRA request exist or provide same as part of the in camera review if the existent records were redacted.
- The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 5 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the in camera inspection. Such

delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.

- The Complainant's voluminous second (2nd) request, a seven (7) page request including numerous records spanning eleven (11) years and one (1) month, is not a valid OPRA request because it bears no resemblance to the record request envisioned by the Legislature, which "provide[s] space for ... a brief description of the record sought."
- The Council defers analysis of whether the original Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.
- The Council defers analysis of whether the Complainant is a prevailing party pending the current Custodian's compliance with the Council's Interim Order.

22. Elizabeth Cross v. Township of Wall (Monmouth) (2011-98)

Records Requested: Insurance bids

Records Format Requested: Copies

- The Custodian certified in the Statement of Information and subsequently on May 2, 2012 that the Township never received any bids for healthcare, dental or vision coverage for the February 2011 renewal. Moreover, the Custodian certified that the Township only solicited quotes for healthcare. Further, the Complainant failed to submit any evidence to refute the Custodian's certification. Thus, the Custodian did not unlawfully deny access to the bids.
- The Complainant has not achieved the desired result because the complaint did not bring about a change (voluntary or otherwise) in the custodian's conduct. Additionally, no factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the GRC determined that the evidence of record supported that no "bids" responsive to the Complainant's OPRA request existed. Therefore, the Complainant is not a prevailing party entitled to an award of a reasonable attorney's fee.

23. Jesse Wolosky v. Borough of Woodland Park (Passaic) (2011-99)

Records Requested: Audio recording

Records Format Requested: Copy

- The Custodian timely complied with the Council's June 26, 2012 Interim Order by adopting the GRC's model request form and providing certified confirmation to the GRC within the prescribed time frame to comply.
- Although the Borough's OPRA request form was in violation of N.J.S.A. 47:1A-5.f., the Council determined that the Custodian's proposed charge of \$10.00 is the actual cost of reproduction of the requested audio recording and is reasonable and warranted under OPRA and the Custodian timely complied with the Council's June 26, 2012 Interim Order. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
- The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Id. at 432. Additionally,

pursuant to *Mason v. City of Hoboken and City Clerk of the City of Hoboken*, 196 N.J. 51 (2008), a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the Custodian adopted the GRC's model request form in accordance with the Council's June 26, 2012 Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. [A]n enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ... justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

24. Jeff Carter v. Franklin Fire District #1 (Somerset) (2011-100)

Records Requested: Agreements

Records Format Requested: Copies

- The current Custodian timely complied with the Council's June 26, 2012 Interim Order by providing access (via Counsel) to the requested records to the Complainant via e-mail and providing certified confirmation to the GRC within the prescribed time frame to comply.
- Although the original Custodian's failure to respond in writing in the statutorily mandated time frame resulted in a "deemed" denial and the original Custodian failed to bear her burden of proving a lawful denial of access to the responsive agreements, the current Custodian timely complied with the Council's June 26, 2012 Interim Order. Additionally, the evidence of record does not indicate that the original Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the original Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.
- The Complainant has achieved "the desired result because the complaint brought about a change (voluntary or otherwise) in the custodian's conduct." Additionally, a factual causal nexus exists between the Complainant's filing of a Denial of Access Complaint and the relief ultimately achieved. Specifically, the current Custodian provided the Complainant with the responsive 2010 agreements in accordance with the Council's June 26, 2012 Interim Order. Further, the relief ultimately achieved had a basis in law. Therefore, the Complainant is a prevailing party entitled to an award of a reasonable attorney's fee. Thus, this complaint should be referred to the Office of Administrative Law for the determination of reasonable prevailing party attorney's fees. [A]n enhancement of the lodestar fee is not appropriate in this matter because the facts of this complaint do not rise to a level of "unusual circumstances ... justify[ing] an upward adjustment of the lodestar[;]" this matter was not one of significant public importance, was not an issue of first impression before the Council, and the risk of failure was not high because the issues herein involved matters of settled law.

25. Baruch B. Blaustein v. Lakewood Board of Education (Ocean) (2011-109)

Records Requested: Budget

Records Format Requested: Copy

- The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request.
- Because OPRA provides that "[i]mmediate access ordinarily shall be granted to budgets...", the Custodian unlawfully denied the Complainant access to copies of the budget for the years 2000 through 2011 by not making those records immediately available upon receipt of the Complainant's OPRA request.
- Because the Custodian failed to respond to each item contained in the Complainant's OPRA request, and failed to specify a date certain on which the Complainant could expect access to be granted or denied, the Custodian's response informing the Complainant of the potential cost was legally insufficient.
- Because the Custodian failed to provide the Complainant with the requested budget for the years 2000 through 2011 in the medium requested, the Custodian must disclose said records to the Complainant in the requested medium. If the records require a substantial amount of manipulation, the Custodian shall calculate in addition to the actual cost of duplicating the records, a special service charge cost which is reasonable and based on the cost for any extensive use of information technology or for the labor cost of personnel providing the service actually incurred by the agency for converting the records relevant to the complaint into the requested medium, or another meaningful medium, and thereafter provide the Complainant with an opportunity to review and object to the charge.
- If applicable, the Custodian shall calculate the appropriate special service charge in accordance with Paragraph No. 4 and shall make the amount of the charge available to the Complainant in writing within five (5) business days from receipt of the Council's Interim Order. The Complainant shall within three (3) business days from receipt of the amount of the charge deliver to the Custodian either (a) payment in the amount of the said charge, or (b) a statement declining to purchase the records. Upon compliance by the Complainant with (a) above, the Custodian shall within fifteen (15) business days from receipt of the Council's Interim Order disclose to the Complainant the requested records in the appropriate medium with any lawful redactions and a detailed document index explaining the lawful basis for any such redaction and simultaneously provide certified confirmation of compliance in accordance with N.J. Court Rule 1:4-4 to the Executive Director. Conversely, upon compliance by the Complainant with (b) above, the Custodian shall within ten (10) business days from receipt of the Council's Interim Order provide a certification in accordance with N.J. Court Rule 1:4-4 to the Executive Director acknowledging the Complainant's declination; thereafter, the Custodian shall have no further obligation with respect to disclosure of the records. The Complainant's failure to take any action within the time provided shall be construed the same as (b) above.
- Because the Custodian was concerned that the records might be damaged in the process, the Custodian did not violate OPRA when she refused to accommodate the Complainant's request to use his personal scanner to scan the requested records into a digital format.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

26. Mark Lagerkvist v. NJ Department of Treasury, Division of Pensions & Benefits (2011-110)

Records Requested: Records, e-mail, correspondence

Records Format Requested: Inspection

- The Custodian did not timely respond to the Complainant's OPRA request. As such, the Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request.
- The GRC must conduct an in camera review of the following requested records to determine the validity of the Custodian's assertion that the record constitutes inter-agency or intra-agency advisory, consultative, or deliberative material and contains pension information which is exempt from disclosure:
 - Statutory Requirements, Police Training Act dated July 1, 2002.
 - Monmouth County Sheriff's Office, Rules and Regulations revised February 11, 2004.
 - Monmouth County Sheriff's Office, General Order 98-20 (job description) revised March 15, 2007.
 - Oath of office dated September 17, 2007 and February 19, 2008.
 - Monmouth County Sheriff's Office, General Order 98-20 (job description) revised September 16, 2008.
 - Executive session minutes (with redactions) dated September 11, 2008.
 - Monmouth County Sheriff's Office chart dated July 21, 2008.
 - Monmouth County Sheriff's Office chart dated September 22, 2008.
 - Interoffice Memorandum from Sergeant ("Sgt") David Finck to Sheriff Kim Guadagno, Monmouth County Sheriff's Office, dated August 25, 2008.
 - Letter from Mr. Robert Melson, Division of Criminal Justice, to Sheriff Kim Guadagno dated December 3, 2009.
 - Letter from Mr. Anthony F. Wieners, President of the New Jersey State Policemen's Benevolent Association, Inc., to Mr. Fred Beaver, Director, dated February 18, 2010.
 - Employment verification form dated April 29, 2010.
 - Letter from Mr. Michael Czyzyk to Mr. Craig Marshall, Monmouth County, dated April 29, 2010.
 - Complaint dated May 12, 2010.
 - Letter from Mr. Michael Czyzyk to Mr. Craig Marshall, Monmouth County, dated June 2, 2010.
 - Member and employer screen prints.
 - Job specifications No. 07595, No. 03696 and No. 05851 dated June 9, 2010.
 - E-mail from Mr. David Finck to Mr. Donovan dated June 9, 2010.
 - Letter from Mr. Craig Marshall to Mr. Michael Czyzyk dated June 14, 2010.
 - Letter from Mr. Craig Marshall to Mr. Michael Czyzyk dated June 15, 2010.
 - Letter from Mr. Shaun Golden, Acting Sheriff of the Monmouth County Sheriff's Office, to Ms. Andrea Bazer, County Counsel of the County of Monmouth, dated June 15, 2010.
 - Memorandum regarding Hiring and Removal Procedures dated June 15, 2010.
 - E-mail from Mr. Michael Czyzyk to the Custodian dated July 8, 2010 (with attachment memorandum).

- Memorandum from Mr. Michael Czyzyk dated September 27, 2010.
- Letter from Mr. Anthony F. Wieners to the Custodian dated December 14, 2010.
- Letter from Mr. Anthony F. Wieners to the Custodian dated January 7, 2011.
- The Custodian must also certify to whether a Chapter 204 review is defined as an investigation for purposes of N.J.S.A. 47:1A-3. The Custodian must further certify to why disclosure of the responsive records would be inimical to the public interest.
- The Custodian must deliver to the Council in a sealed envelope nine (9) copies of the requested unredacted records (see No. 2 above), a document or redaction index, as well as a legal certification from the Custodian, in accordance with N.J. Court Rule 1:4-4, that the records provided are the records requested by the Council for the in camera inspection. Such delivery must be received by the GRC within five (5) business days from receipt of the Council's Interim Order.
- Ms. O'Hare responded to the Complainant's OPRA request Item No. 2 stating that no records responsive exist. Moreover, the Custodian certified in the Statement of Information that no records responsive exist and the Complainant failed to submit any competent, credible evidence to refute the Custodian's certification. Thus, the Custodian did not unlawfully deny access to the requested records.
- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

27. **Bernard Reid v. NJ Department of Corrections (2011-111) *Reconsideration***

Records Requested: Letters, grievances, policies, customs, practices, court decisions, consent decrees, or settlement agreements, records.

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant failed to establish in his request for reconsideration of the Council's May 29, 2012 Final Decision that the Council's decision was based upon a "palpably incorrect or irrational basis" or that it is obvious the finder of fact did not consider, or failed to appreciate, the significance of probative, competent evidence. Further, the Complainant failed to demonstrate that the Council in rendering its decision acted in an arbitrary, capricious or unreasonable manner. Accordingly, reconsideration of the Council's decision, based upon the Complainant's asserted reasons for said reconsideration, is denied.

28. **Sabino Valdes v. Union City Board of Education (Hudson) (2011-139)**

Records Requested: Executive session minutes

Records Format Requested: Copies

- Although the Custodian responded to the Complainant's OPRA request in writing in a timely manner, his response to the Complainant's OPRA request was insufficient because his response that the Complainant was previously provided with all responsive records failed to contain a lawful basis for denying access to said OPRA request.
- The Custodian certified in the Statement of Information that no executive session minutes for the Union City Board of Education's March 29, 2001 caucus meeting existed and the

Complainant failed to submit any evidence to refute the Custodian's certification. Thus, the Custodian did not unlawfully deny access to the requested minutes.

- Although the Custodian's response to the Complainant's OPRA request was insufficient, the Custodian did not unlawfully deny access to the requested records because same do not exist. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's insufficient response does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

29. Sabino Valdes v. Union City Board of Education (Hudson) (2011-146)

Records Requested: Executive session minutes

Records Format Requested: Copies

- Although the Custodian responded to the Complainant's OPRA request in writing in a timely manner, his response to the Complainant's OPRA request was insufficient, because his response that the Complainant was previously provided with all responsive records on two (2) occasions failed to contain a lawful basis for denying access to said OPRA request.
- The Custodian certified in the Statement of Information that the no executive session minutes for the Union City Board of Education's October 30, 2003 caucus meeting existed and the Complainant failed to submit any evidence to refute the Custodian's certification. Thus, the Custodian did not unlawfully deny access to the requested minutes.
- Although the Custodian's response to the Complainant's OPRA request was insufficient, the Custodian did not unlawfully deny access to the requested records because same do not exist. Additionally, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's insufficient response does not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

30. Sabino Valdes v. Union City Board of Education (Hudson)(2011-147, 2011-157, 2011-172 & 2011-181)

Records Requested: Minutes

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that because the Complainant's four (4) requests for minutes "that include a motion made by the Union City Board of Education to approve the minutes ..." from other meetings fail to identify the specific dates of the minutes sought and would require the Custodian to conduct research in order to locate the responsive records, the Complainant's requests are invalid under OPRA.

31. Jerry W. Pecaro v. County of Union (2011-187)

Records Requested: Records, official police reports, complaints, memoranda, correspondence, or files

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically name an identifiable government record sought.

32. Jerry W. Pecaro v. County of Union (2011-188)

Records Requested: Records, official police reports, complaints, memoranda, correspondence, or files

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically name an identifiable government record sought.

33. Jerry W. Pecaro v. County of Union (2011-189)

Records Requested: Records, official police reports, complaints, memoranda, correspondence, or files

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically name an identifiable government record sought.

34. Jerry W. Pecaro v. County of Union (2011-190)

Records Requested: Records, official police reports, complaints, memoranda, correspondence, or files

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically name an identifiable government record sought.

35. Jerry W. Pecaro v. County of Union (2011-191)

Records Requested: Records, official police reports, complaints, memoranda, correspondence, or files

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically name an identifiable government record sought.

36. Jerry W. Pecaro v. County of Union (2011-192)

Records Requested: Records, official police reports, complaints, memoranda, correspondence, or files

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that the Complainant's request is invalid under OPRA because it constitutes an overly broad, blanket request that fails to specifically name an identifiable government record sought.

37. Keith A. Werner v. NJ Department of Corrections (2011-206)

Records Requested: Form 980-I, "Inmate Research Participation Consent forms" (980-II)

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that because the Custodian has certified that no records responsive to the Complainant's OPRA request exist and because there is no competent, credible evidence in the record to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainant access to the requested records.

38. Mr. & Mrs. L. Johnston v. Montclair Board of Education (Essex) (2011-213)

Records Requested: College applications

Records Format Requested: Copies

- The Executive Director respectfully recommends the Council find that because the Custodian has certified that no records responsive to the Complainants' OPRA request exist and because there is no competent, credible evidence in the record sufficient to refute the Custodian's certification, the Custodian has not unlawfully denied the Complainants access to the requested records.

39. Richard Rivera v. City of Passaic (Passaic) (2011-214)

Records Requested: Reports, summaries, logs, recordings

Records Format Requested: Copies

- The Custodian's failure to respond in writing to the Complainant's OPRA request either granting access, denying access, seeking clarification or requesting an extension of time within the statutorily mandated seven (7) business days results in a "deemed" denial of the Complainant's OPRA request.
- Because the Custodian failed to respond to each item contained in the Complainant's OPRA request, and failed to specify a date certain on which the Complainant could expect access to be granted or denied, the Custodian's response that the request was under review by the Custodian's Counsel was legally insufficient.
- Request item number 1 and request item number 2 identify records by name, date, and time. As such, the Complainant's requests identify specific government records, the requests for such items are valid under OPRA, and the Custodian must disclose said records to the Complainant.
- Because request item number 3 sought police daily duty logs, which records necessarily include details regarding surveillance techniques and staffing levels which, if disclosed, could pose a risk to the safety of police personnel, such records are exempt from the definition of a government record.

- The Complainant's requests for item numbers 4 and 5 are invalid under OPRA because they are overly broad and fail to identify specific government records sought. Moreover, because OPRA does not require custodians to research files to discern which records may be responsive to a request, the Custodian had no legal duty to conduct research to locate records potentially responsive to the Complainant's request.
- Because records pertaining to employee injuries on duty as well as the supervisory reports which accompany them are personnel records exempt from disclosure the Custodian did not err in denying the Complainant access to request item number 6.
- Because the Custodian certified that the records responsive to request item number 7 are exempt from disclosure because they constitute communications between a public entity and its insurance carrier, the Custodian did not unlawfully deny access to said records.
- Because the Attorney General's Internal Affairs Policy & Procedure provides that internal affairs annual summary reports shall be made available to the public, the Custodian failed to meet her burden of proving that the denial of access to the records which comprise request item number 8 was authorized by law. The Custodian shall therefore disclose said record to the Complainant with the names of complainants and subject officers redacted.
- Because use of force reports cannot be exempt from disclosure under OPRA as criminal investigatory records because they are required to be made, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law, and the Custodian shall therefore disclose to the Complainant the records which comprise request item number 9, which are the requested use of force reports for all incidents from 2008 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
- Because use of force reports cannot be exempt from disclosure under OPRA, a summary of those reports also cannot be exempt from disclosure, and because the Custodian failed to meet her burden of proving that denial of access to said records is authorized by law, the Custodian must disclose to the Complainant the records which comprise request item number 9, which are the requested use of force annual summary reports for 2005 through 2010 in unredacted form, except for the names of subjects not arrested on those cases where there was an arrest made or where charges were made.
- Because request item number 11, police vehicle pursuit reports for each pursuit incident for 2008 through 2010 are required to be made pursuant to the AG Pursuit Policy and therefore cannot be exempt from disclosure under OPRA as criminal investigatory records, and because said records articulate the reasons why police may initiate and/or terminate a pursuit and if disclosed would create a risk to the safety of persons and property, the requested records are exempt from disclosure.
- Because request item number 12, police vehicle pursuit annual summaries for 2005 through 2010 are required to be made pursuant to the AG Pursuit Policy and therefore cannot be exempt from disclosure under OPRA as criminal investigatory records, and because the Custodian failed to otherwise cite a valid legal basis for exempting the requested records from access, the Custodian failed to meet her burden of proving that denial of access to the requested records is authorized by law, and the Custodian shall therefore disclose said records to the Complainant.
- The Custodian shall disclose the records responsive to request items numbered 3, 8, 9, 10 and 12 of the Complainant's OPRA request within five (5) business days from receipt of the Council's Interim Order with appropriate redactions as necessary, including a detailed

document index explaining the lawful basis for each redaction, and simultaneously provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4 , to the Executive Director. If no records responsive to the request exist, the Custodian shall so certify to the Complainant and provide certified confirmation of compliance, in accordance with N.J. Court Rule 1:4-4 , to the Executive Director within the time period set forth above.

- The Council defers analysis of whether the Custodian knowingly and willfully violated OPRA and unreasonably denied access under the totality of the circumstances pending the Custodian's compliance with the Council's Interim Order.

40. Richard Rivera v. City of Bayonne, Law Department (Hudson) (2012-49)

Records Requested: use of force incident reports

Records Format Requested: Electronic copies

- Although the Custodian disclosed to the Complainant all records ordered for disclosure pursuant to the Council's May 29, 2012 Order by making copies of the records available in the City Clerk's office on May 28, 2012, and although the Custodian provided certified confirmation of compliance to the Executive Director within the time period provided for compliance with said Order, the Custodian failed to fully comply with the Order because the Custodian failed to convert the records in order to provide them electronically via e-mail. However, the Council declines to order the Custodian to provide the requested records electronically because the Custodian certified to the GRC on June 4, 2012 that he disclosed to the Complainant the requested records by making the records available in hard-copy format on May 28, 2012 at the City Clerk's office.
- Although the Custodian failed to provide the requested records to the Complainant in the medium requested by the Complainant, and although the Custodian failed to provide to the GRC a supplemental certification averring whether the requested records for the instant complaint were made available in redacted or unredacted form, the Custodian did certify in a timely manner that he made the requested records available to the Complainant. Moreover, the evidence of record does not indicate that the Custodian's violation of OPRA had a positive element of conscious wrongdoing or was intentional and deliberate. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

41. James Katz (On behalf of Camden County Counsel #10) v. NJ Civil Service Commission (2012-51)

Records Requested: Documents

Records Format Requested: Copies via e-mail

- The Executive Director respectfully recommends the Council find that the Complainant's initial OPRA request as well as the Complainant's clarified request are invalid under OPRA because the requests are overly broad and/or unclear as they fail to name specifically identifiable government records and require research beyond the scope of a custodian's duties.

42. Richard Rivera v. City of Bayonne (Hudson) (2012-87)

Records Requested: Use of force reports

Records Format Requested: Electronic copies

- Although the Custodian herein disclosed to the Complainant all records ordered for disclosure pursuant to the Council's May 29, 2012 Order by making copies of the records available in the City Clerk's office on May 28, 2012, the Custodian failed to fully comply with the Order because the Custodian failed to convert the records in order to provide them electronically via e-mail. However, the Council declines to order the Custodian to provide the requested records electronically because the Custodian certified to the GRC on July 20, 2012 that he disclosed to the Complainant the requested records by making the records available in hard-copy format on May 28, 2012 at the City Clerk's office.
- Although the Custodian failed to comply in a timely manner with the Council's May 29, 2012 Interim Order by failing to submit a certified confirmation of compliance until the eleventh (11th) business day after the extended due date granted by the GRC for compliance with said Order, and although the Custodian failed to provide the requested records to the Complainant in the medium requested by the Complainant, the Custodian did certify that he made the requested records available to the Complainant. Therefore, it is concluded that the Custodian's actions do not rise to the level of a knowing and willful violation of OPRA and unreasonable denial of access under the totality of the circumstances.

DRAFT